IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1682 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BIRLA VXL LIMITED

Versus

HARISINH VAJUBHA

Appearance:

1. Special Civil Application No. 1682 of 1996
Mr. K.M. Thakkar for M/S TRIVEDI & GUPTA
for Petitioner No. 1
MR SANDEEP N BHATT for Respondent No. 1-5

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 12/01/2005

ORAL JUDGEMENT

Heard learned advocate Mr. Thakar for the petitioner and MR. Bhatt for the respondent No.1

Harisinh Vajubha only. In this petition, the petitioner company has challenged the order made by the Industrial Tribunal, Rajkot which is at Annexure A page 42 in Conciliation Case No. 162 of 1995 and Reference (IT). 98 of 1993 and Complaint No.5/96, 6/96, 7/96 vide Exh.4 dated 27th January, 1996 wherein the tribunal has granted stay against the petitioner not to terminate the service or dismiss the respondents whose who are concerned in Complaint NO.5/96, 6/96 and 7/96 and also concerned to charge sheet dated 10th March, 1995. While issuing rule in this matter, this court (Coram : H.L. Gokhale,J.) passed the following order on 26th April, 1996.

"Heard Mr. Trivedi for the petitioner and Mr. Pal for the respondents. Respondents No.1 to 4 are workmen working under the petitioner Digjam Woolen Mills situated at Jamnagar. It is the se of the petitioner that the respondents committed misconduct and thereby they came to be charge sheeted. It is the further case of the petitioner that necessary inquiry was conducted thereafter and since the charges were serious, orders of dismissal came to be passed. The orders of dismissal came to be passed in January/February 1996 and the petitioner has applied for approval of those orders, inasmuchas one Reference between the petitioner and the workmen therein is pending before the Industrial Tribunal at Rajkot.

The case of the respondents is that respondents No.1 to 4 are protected workmen and for that, respondent NO.5 Union had applied for protected character. That application is pending before the Assistant Labour Commissioner at Jamnagar. The further case of respondents No. 1 to 4 is that the inquiry which was conducted against them was not a proper inquiry; they were not given proper representation and, hence, they filed a complaint under section 33-A of the Industrial Disputes Act, 1947 and therein applied for an interim relief of stay of dismissal orders which came to be granted on 22nd February, 1996. Being aggrieved by that order, the present petition has been filed by the mill company.

I have heard Mr. Trivedi for the petitioner. Amongst others, he submitted that such an order cannot be passed in a proceeding under Section 33A of the Industrial Disputes Act and, in any case, in the facts of the present case, such an

order was not warranted. Mr. Pal, on the other hand, submitted that the application was fully within the four corners of law and in the facts of the case, it was necessary to be passed.

The matter requires consideration. Hence, Rule.

The case of the petitioner is that an inquiry has been held whereas the case of respondents No. 1 to 4 is that the same was not held in accordance with the principles of natural justice. That is a matter which has to be gone into. Until that is gone into,it cannot be said that no inquiry was held. In Shreenarayan v. Anup Engg. Ltd., reported in 1995 (1) GLR 97 where an inquiry had not been held, a Division Bench of this Court had directed the employer to pay full wages during the interim period. That was reversed by the Supreme Court and the Supreme COurt order is reported in 1995 (1) GLH 345. In that view of the matter, the order in the nature of full wages or directing the employee to be taken back on duty or stay of dismissal cannot be granted by way of interim relief. In that view of the matter, ad.interim relief in terms of prayer clause 8(D) granted on 1st March, 1996 is hereby confirmed.

Apart from the complaint under section 33A which the workman has filed, it is the approval application which must proceed expeditiously. The Industrial Tribunal, Rajkot will proceed to decide the approval application filed by the petitioner against the respondents expeditiously and will endeavour to dispose of the same by the end of September, 1996. The complaint which is is filed by the workman as well also the approval application will be decided by the Industrial Tribunal on merits of the case in accordance with law.

Mr. Pal waives service of Rule. Hearing of this petition is expedited."

This Court has, thus, granted ad.interim relief in terms of prayer clause 8(D) and confirmed the same by order dated 26th April, 1996. Terms of prayer clause 8(D) are reproduced as under:

"8(D) Pending hearing and final disposal of the present petition, Your Lordships may be pleased to grant interim relief staying the implementation, operation and execution of the

impugned order dated 22.2.1996 (at annexure-A) passed by the Industrial Tribunal, Rajkot."

Thus, in view of the ad.interim relief granted by this court in terms of prayer clause 8(D) and confirmed by this Court by order dated 26.4.1996, implementation, operation and execution of the impugned order dated 22.2.1996 (at annexure-A) passed by the Industrial Tribunal, Rajkot was stayed by this COurt and that order has not operated.

Today, when this matter was taken up for final hearing, learned advocate Mr. K.M.Thakar appearing for M/s. Trivedi & Gupta for the petitioner has submitted that the matter has been settled between the parties in respect of Respondent NO.1 Harisinh Vajubha, Respondent NO.3 Bhavanisinh Bhanvarsinh and Respondent No.4 Philip Mathew. Thus, as regards Respondent No. 2 P.J. Jadeja, there is no settlement between the parties and Respondent NO.5 namely Gujarat Rajya Kamdar Sabha is the Union and the matter is pending before the Industrial Tribunal. Learned advocate Mr. Thakar has produced before this COurt copy of the settlement arrived at between the said three respondents and the Company and the orders thereon have been passed by the Company. Those orders alongwith the forwarding letter addressed by the Company to the advocate is ordered to be taken on the record of this petition.

In view of these facts, out of four workmen, three workmen referred to above have directly settled the matter with the petitioner Company and only Respondent No.2 P.J. Jadeja is remained without settlement and the matter is pending before the Industrial Tribunal, Rajkot. While confirming the ad.interim relief which was granted earlier, directions were issued by this Court to the Industrial Tribunal, Rajkot to decide the approval application filed by the petitioner against the respondents expeditiously and will endeavour to dispose of the same by the end of September, 1996. However, learned advocate Mr. K.M. Thakar is not aware as to whether the proceedings in respect of Respondent No.2 PJ Jadeja are pending or not. However, learned advocate Mr.Thakar has requested to reserve liberty in favour of the company to make clarification in case required to be made by the company. In view of these facts, considering the nature of the interim relief and the directions issued by this Court to the Industrial Tribunal, Rajkot while confirming the ad.interim relief in terms of prayer clause 8(D), if necessary directions are issued to the Industrial Tribunal, Rajkot to decide the proceedings

within some reasonable period in accordance with law, if not decided so far by this ti me, such directions will met ends of justice.

Accordingly, Industrial Tribunal, Rajkot is directed to decide, if not decided so far, the approval application filed by the petitioner in respect of respondent No.2 Shri PJ Jadeja as well as the complaint filed by the said workman as well also the approval application concerning the said workman and dispose of the same in accordance with law within three months from the date of receipt of copy of this order. Till then, the ad. interim order confirmed by this Court by order dated 26.4.1996 shall continue to operate in respect of the workman PJ Jadeja. With these observations and directions, this petition is disposed of with a liberty in favour of the petitioner company to make clarification as regards pendency of the matter before the tribunal. Rule is discharged. Interim relief stands vacated. No order as to costs.

(H.K. Rathod,J.)

Vyas